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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 RICHARD MEYER,

10 Plaintiff,

11 v.

12 OBERTO SAUSAGE COMPANY,

13 Defendant.

CASE NO. 3:17-cv-05076-RJB

ORDER DENYING MOTION TO  
ENFORCE SETTLEMENT  
AGREEMENT

14 THIS MATTER comes before the Court on Plaintiff's Motion to Enforce Settlement  
15 Agreement and Terms (Dkt. 33). The Court has considered the Motion to Enforce Settlement  
16 Agreement and Terms and the remaining record. For the reasons provided herein, Plaintiff's  
17 Motion to Enforce Settlement Agreement and Terms (Dkt. 33) should be denied.

18 **I. RELEVANT FACTS AND PROCEDURAL HISTORY**

19 In a complaint originally filed in Pierce County Superior Court on January 6, 2017,  
20 Plaintiff Dr. Richard Meyer, a sixty-nine-year-old former employee of Defendant Oberto  
21 Sausage Company, alleges that Defendant violated the Washington Law Against Discrimination  
22 and Age Discrimination in Employment Act and demoted and terminated Dr. Meyer for  
23 reporting or encouraging the reporting of food safety issues to government regulators. Dkt. 1. On  
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1 February 1, 2017, Defendant removed the case to this Court on the grounds of federal question,  
2 supplemental, and diversity jurisdiction. Dkt. 1.

3 Parties began settlement discussions on October 15, 2018. Dkt. 35, at 134. On December  
4 05, 2018, Defendant's counsel emailed Plaintiff's counsel the following:

5 I am willing to follow up on our telephone call ... when you  
6 extended a new settlement demand of \$[] contingent on the parties  
7 entering into a mutual release that includes a release by Oberto of  
8 any claims related to the mayo[nnaise] patent.

9 []

10 *At this time, our client has authorized me to extend a new*  
11 *settlement offer of \$[], which is \$[] above the middle of its range at*  
12 *mediation. Oberto would also be willing to release any claims*  
13 *related to the mayo patent .... [T]his offer is contingent on the*  
14 *parties entering into a mutually agreeable settlement agreement*  
15 *that includes a release of all claims, and we will need to discuss*  
16 *and agree upon the non-monetary terms, but we wanted to start*  
17 *with the monetary amount.*

18 Dkt. 35, at 134–35 (emphasis in original, filed as a declaration by Plaintiff's counsel in support  
19 of the Motion to Enforce Settlement Agreement and Terms).

20 On December 17, 2018, Plaintiff's counsel responded:

21 We have a deal. []

22 The patents for the salt, mayo and cold pasteurization belong to Dr.  
23 Meyer.

24 The Patents for the acid stable meat and meat emulsions are  
Oberto's, but Oberto let them lapse and they are now in the public  
domain.

[]

So please forward me the agreement so that I may review and get  
to my client for signature.

Dkt. 35, at 134.

1 On January 10, 2019, Plaintiff's counsel wrote: "Just checking in on this settlement  
2 agreement, what is the status? Would you mind e-mailing the Court to advise them that the  
3 matter has resolved[?]" Dkt. 35, at 53.

4 On January 11, 2019, with Plaintiff's consent (Dkt. 35, at 64), Defendant filed a Notice of  
5 Resolution, requesting sixty days to finalize the resolution. Dkt. 31. The Court ordered  
6 Dismissal/Settlement papers due by March 15, 2019. Dkt. 32.

7 On January 24, 2019, Defendant's counsel provided Plaintiff's counsel with an amended  
8 proposed Settlement Agreement and Release ("Proposed Agreement"), which appears to have  
9 included monetary and non-monetary terms, including a release of any ownership rights to four  
10 published patents, and providing Oberto with a worldwide license to use the patents. Dkt. 35, at  
11 132–33, 137–38. The Proposed Agreement was apparently unsigned by either party. Dkt. 35, at  
12 142.

13 On January 25, 2019, Plaintiff's counsel expressed concern about the worldwide patent  
14 licensing, writing that "[t]his issue was not raised prior to our agreement to settle this matter."  
15 Dkt. 35, at 132. The following day, Defendant's counsel replied that "[t]his is a standard and  
16 necessary term that goes hand in hand with settling the patent issues. We will review and  
17 respond to your proposed language once we have reviewed it with Oberto and its patent  
18 attorney." Dkt. 35, at 132.

19 Defendant's counsel declared that, on January 28, 2019, Plaintiff's counsel sent a letter  
20 discussing issues with the Proposed Agreement and submitted a redlined version removing the  
21 licensing language. Dkt. 37. Plaintiff's counsel, Defendant's counsel, and Defendant's patent  
22 attorney participated in a February 7, 2019, conference call to discuss the Proposed Agreement  
23 issues, whereupon Defendant's counsel agreed to send Plaintiff's counsel an updated proposed  
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1 settlement agreement, which Defendant’s counsel emailed to Plaintiff’s counsel on February 8,  
2 2019. Dkt. 37. On February 13, 2019, Plaintiff’s counsel left a voicemail stating, in part, “Dr.  
3 Meyer is just not willing to agree to the license .... I’m going to have to bring a motion to  
4 enforce the settlement agreement.” Dkt. 37, at 2–3.

5 On February 13, 2019, Plaintiff filed the instant Motion to Enforce Settlement Agreement  
6 and Terms (Dkt. 33), to which Defendant responded in opposition (Dkt. 36) and Plaintiff replied  
7 (Dkt. 41).

## 8 **II. DISCUSSION**

### 9 **A. WASHINGTON STATE SUBSTANTIVE LAW APPLIES**

10 Under the rule of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), federal courts sitting in  
11 diversity jurisdiction apply state substantive law and federal procedural law. *Gasperini v. Center*  
12 *for Humanities, Inc.*, 518 U.S. 415, 427 (1996). In applying Washington law, the Court must  
13 apply the law as it believes the Washington Supreme Court would apply it. *Gravquick A/S v.*  
14 *Trimble Navigation Intern. Ltd.*, 323 F.3d 1219, 1222 (9th Cir. 2003). “[W]here there is no  
15 convincing evidence that the state supreme court would decide differently, a federal court is  
16 obligated to follow the decisions of the state's intermediate appellate courts.” *Vestar Dev. II,*  
17 *LLC v. Gen. Dynamics Corp.*, 249 F.3d 958, 960 (9th Cir. 2001) (quoting *Lewis v. Tel.*  
18 *Employees Credit Union*, 87 F.3d 1537, 1545 (9th Cir. 1996)).

### 19 **B. PLAINTIFF’S MOTION TO ENFORCE SETTLEMENT AGREEMENT**

20 Generally, a “trial court has power to summarily enforce on motion a settlement  
21 agreement entered into by the litigants while the litigation is pending before it.” *In re City*  
22 *Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir. 1994). However, “[s]ummary enforcement is  
23 ill-suited to situations presenting complex factual issues related either to the formation or the  
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1 consummation of the settlement contract, which only testimonial exploration in a more plenary  
2 proceeding is apt to satisfactorily resolve.” *Id.* (internal quotations and citations omitted).  
3 Accordingly, “[w]here material facts concerning the existence or terms of an agreement to settle  
4 are in dispute, the parties must be allowed an evidentiary hearing.” *Callie v. Near*, 829 F.2d 888,  
5 890 (9th Cir. 1987).

6 In Washington, “[t]he validity and enforceability of a settlement agreement is determined  
7 by reference to the substantive law of contracts.” *Veith v. Xterra Wetsuits, L.L.C.*, 144 Wn. App.  
8 362, 366 (2008) (internal citation omitted). “A contract requires offer, acceptance, and  
9 consideration.” There is no dispute over whether there was consideration here. The Parties’  
10 dispute is whether there was mutual assent to settlement agreement terms in their email  
11 exchanges.

12 “[F]or a contract to form, the parties must objectively manifest their mutual assent” to  
13 terms that are “sufficiently definite.” *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171,  
14 177-78 (2004). “Generally, manifestations of mutual assent will be expressed by an offer and  
15 acceptance.” *Keystone*, 152 Wn.2d at 178. “There is no valid contract until an offer is accepted.”  
16 *Veith*, 144 Wn. App. at 366 (internal citation omitted). “Acceptance is an expression  
17 (communicated by word, sign, or writing to the person making the offer) of the intention to be  
18 bound by the offer’s terms.” *Id.* “A contract exists when the intention of the parties is plain and  
19 the terms of a contract are agreed upon even if one or both of the parties contemplated later  
20 execution of a writing.” *Veith*, 144 Wn. App. at 366.

21 To determine whether a contractual relation has been established by informal writings,  
22 where the parties have in mind the subsequent signing of a formal written contract, it is  
23 necessary to inquire whether (1) the subject matter has been agreed upon, (2) the terms are all  
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1 stated in the informal writings, and (3) whether the parties intended a binding agreement prior to  
2 the time of the signing and delivery of a formal written contract. *Leowi v. Long*, 76 Wash. 480,  
3 484 (1913).

4 First, the subject matter of the putative settlement is disputed, especially the scope of any  
5 agreement regarding the ownership and licensing of the patents. Second, the terms are disputed,  
6 especially the inclusion of licensing rights for the patents. Non-monetary terms were specifically  
7 not agreed upon in the December 05, 2018, email from Defendant’s counsel (“[W]e will need to  
8 discuss and agree upon the non-monetary terms[.]” Dkt. 35, at 135). Finally, Defendant’s counsel  
9 did not intend a binding agreement prior to the time of signing a written settlement agreement  
10 (“[T]his offer is *contingent on the parties entering into a mutually agreeable settlement*  
11 *agreement that includes a release of all claims[.]*” Dkt. 35, at 135 (emphasis in original)).

12 The Parties never agreed on a final settlement agreement. The Proposed Agreement was  
13 not signed by either party (Dkt. 35, at 142); the Parties apparently continued to edit the Proposed  
14 Agreement (Dkts. 35, at 125; and 37, at 2); the Parties did not objectively manifest their mutual  
15 assent to the terms exchanged by email between December 05, 2018, and January 26, 2019 (Dkt.  
16 35; *see also* Dkt. 37<sup>1</sup>). Therefore, Plaintiff’s Motion to Enforce Settlement Agreement and Terms  
17 (Dkt. 33) should be denied.

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20 <sup>1</sup> Defendant’s counsel declared that:

21 I never agreed on behalf of Oberto to include as part of the settlement of this  
22 case a full and complete release for all of the patents identified by Plaintiff on  
23 the terms Plaintiff now suggests. Throughout my discussions with Plaintiff’s  
24 counsel, there was always an understanding that the agreement on the settlement  
amount was contingent on the parties agreeing on the non-monetary terms such  
as the terms of the release of the relevant patents and including the language of  
the formal Settlement Agreement and Release.

Dkt. 37, at 1–2.

1 Counsel are cautioned not to advise the Court of a settlement prematurely. The Court will  
2 reinstate the trial date of June 3, 2019, and pretrial dates found in Dkt. 30 on its calendar.

3 **III. ORDER**

4 Therefore, it is hereby **ORDERED that:**

- 5 • Plaintiff's Motion to Enforce Settlement Agreement and Terms (Dkt. 33) is  
6 **DENIED.**

7 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
8 to any party appearing *pro se* at said party's last known address.

9 Dated this 6<sup>th</sup> day of March, 2019.

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11 ROBERT J. BRYAN  
12 United States District Judge  
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